

Arbitration Procedures and Practice in Luxembourg: Overview

by Fabio Trevisan, Laure-Hélène Gaicio-Fievez, and Javier García Olmedo, *BSP*

Country Q&A | Law stated as at 01-Apr-2025 | Luxembourg

A Q&A guide to arbitration law and practice in Luxembourg.

The country-specific Q&A guide provides a structured overview of the key practical issues concerning arbitration in this jurisdiction, including any mandatory provisions and default rules applicable under local law, confidentiality, local courts' willingness to assist arbitration, enforcement of awards, and the available remedies, both final and interim.

Legislative Framework

Applicable Legislation

1. What legislation applies to arbitration?

Principal Legislation

Sources of law. The Luxembourgish New Code of Civil Procedure (*Nouveau Code de procédure civile*) (NCPC) contains the Luxembourgish arbitration law, in a specific section dedicated to arbitration (Articles 1224 to 1249), as amended by the New Arbitration Law of 19 April 2023.

International or domestic. Luxembourg law does not distinguish between domestic and international arbitration.

UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)

The Arbitration Law is heavily influenced by the UNCITRAL Model Law.

Mandatory Legislative Provisions

2. Are there any mandatory legislative provisions? What is their effect?

The Arbitration Law provides a number of mandatory rules that govern the conduct of the arbitration including, among others, those relating to:

- The matters that can be submitted to arbitration (Articles 1224, 1225, and 1226, NCPC).
- Enforcement of arbitration awards by an order of the President of the District Court (Articles 1233 to 1244, NCPC for awards rendered in Luxembourg; Articles 1245 to 1249, NCPC for awards rendered abroad).
- The limited circumstances provided for in Article 1238 of the NCPC for setting aside an arbitral award.

3. Does the law prohibit any types of dispute from being resolved through arbitration?

Matters excluded from arbitration include disputes relating to the:

- Status and legal capacity of natural persons.
- Marital relations.
- Application for divorce or legal separation.
- Representation of incapacitated persons or missing persons.

(Article 1225, NCPC.)

Under Luxembourg case law, disputes in the field of labour law are also excluded from arbitration.

Any arbitration clause inserted in a standard contract concluded between professional traders and consumers and that would deprive the consumer of their right to access the courts is considered as an abusive clause, unless it can be shown that the consumer specifically adopted the clause.

Limitation

4. Does the law of limitation apply to arbitration proceedings?

Unless otherwise agreed by the parties, the rules applying to judicial proceedings apply to arbitration proceedings (Article 1231-2, NCPC). These include the rules regarding limitation periods.

The relevant limitation periods and triggering events depend on the law applicable to the substance of the case (Articles 2262 and 2265, and 2271 to 2281, Civil Code (*Code Civil*)). The ordinary limitation period for civil claims in contract and tort is 30 years starting from the date on which the obligation should have been fulfilled, but the Civil Code provides for several shorter limitation periods for specific actions.

The parties cannot agree on longer limitation periods than those that apply to judicial proceedings, but they can agree on shorter limitation periods.

Arbitration Institutions

5. Which arbitration institutions are commonly used to resolve large commercial disputes?

The most commonly used arbitration institution is the Luxembourg Arbitration Centre (LAC). The LAC contributes to the development of arbitration law and to the training of arbitrators, and supports local arbitration associations such as the [Think Tank for Arbitration](#) and the [Luxembourg Arbitration Association](#).

The LAC has its own Arbitration Rules, which are similar to the International Chamber of Commerce (ICC) International Court of Arbitration Rules, and offers the usual related services, such as (among others):

- Appointment of an arbitrator when the parties do not agree on the appointment of the chairman.
- Proofreading of final decisions before they are taken.
- Provision of meeting rooms.
- Translation services.

The LAC is governed by an Arbitration Council, comprising:

- The President of the National Luxembourg Committee of the ICC.
- The National member of the Arbitration Court of the ICC.
- The President of the Luxembourg Bar Association.
- The Director of the Chamber of Commerce.
- The President of the Auditors Institute (*Institut des Réviseurs d'Entreprise*) (IRE).

The Arbitration Council does not itself decide on disputes or act as an arbitrator, but is an administrative body that acts in a supervisory capacity, in accordance with the LAC rules.

Some arbitration proceedings in Luxembourg take place under the rules of CEPANI (the oldest and largest Belgian arbitration and mediation centre, located in Brussels) or under the ICC rules.

Many arbitrations are ad hoc, referring to different institutional rules on a case-by-case basis.

Jurisdictional Issues

6. What methods are available for a party to challenge the tribunal's jurisdiction? Does the tribunal or the local court determine issues of jurisdiction?

The principle of kompetenz-kompetenz is recognised in Luxembourg (Article 1227-2, Arbitration Law). Therefore, an arbitral tribunal can rule on its own jurisdiction and any questions relating to the existence or validity of the arbitration agreement.

State courts will decline jurisdiction if one of the parties shows the existence of a valid arbitration clause (provided the party raises at the start of proceedings the incompetence of the state courts due to the arbitration clause). If a party to arbitration proceedings asks a Luxembourg court to determine an issue relating to the tribunal's jurisdiction, the court declines jurisdiction unless the arbitration clause is null or not applicable (Article 1227-3, NCPC). The court cannot of its own accord raise its own lack of jurisdiction. State courts must decline jurisdiction even if the arbitral tribunal has not yet been appointed. Case law further confirms that a state court's non-jurisdiction necessarily implies the arbitral tribunal's jurisdiction.

While this position has been well established by case law in relation to the New York Convention, a decision of the Court of Appeal confirmed that the same principle should also apply to the Washington Convention (*Micula v. Romania*, judgment of the Luxembourg Court of Appeal of 11 February 2021, No. 15/21).

Domestic courts may, however, provide ex-post control of the arbitral tribunal's jurisdiction when the District Court proceeds with the exequatur of awards (domestic awards under Articles 1233 and 1238 of the NCPC, and foreign awards under Articles 1245 and 1246 of the NCPC), or in the case of annulment proceedings against domestic awards before the Court of Appeal (Articles 1236 and 1238, NCPC). Courts review whether the arbitral tribunal wrongly assessed its jurisdiction, whether it was properly constituted, and so on.

Arbitration Agreements

Validity Requirements

7. What are the requirements for an arbitration agreement to be enforceable?

Substantive and Formal Requirements

Formal requirements. Arbitration agreements are not subject to any formal requirement and need not be in writing (Article 1227, NCPC). Common rules of evidence apply to the proof of the existence and content of the arbitration agreement.

There is no requirement of form for either the arbitration clause or the submission agreement. These can be concluded at any moment, including when court proceedings are already pending. Recording it in writing is merely a matter of evidencing its existence and content.

Substantive requirements. An arbitration agreement is an agreement by which the parties agree to submit to arbitration all or certain disputes that have arisen or may arise between them in respect of a particular legal relationship, whether contractual or not (paragraph 1, Article 1227, NCPC). Parties only need to express their intent to arbitrate. There are no other substantive requirements.

Separate Arbitration Agreement

A clause in the main contract is sufficient to form an arbitration agreement.

If a separate document is entered between the same parties (for example, an addendum to the main contract) and refers explicitly to the arbitration clause, the dispute linked to this other document would be referred to arbitration.

Arbitration agreements can be contained in general terms and conditions. However, general conditions only bind the other party if both:

- That other party was able to see the general conditions before signing the contract.
- The other party can be considered to have accepted them, depending on the circumstances.

Unilateral or Optional Clauses

8. Are unilateral or optional clauses enforceable?

It is unclear whether unilateral or optional clauses are enforceable, as there have been no relevant court cases on this point.

Third Parties

9. Can a non-signatory to an arbitration agreement be joined to the arbitration proceedings?

In principle, the arbitration agreement only binds its signatories. However, non-signatory to an arbitration agreement can be joined to the arbitration proceedings in the following circumstances:

- In the event of an assignment of contracts or rights, and of stipulation for the benefit of a third party.
- If circumstances exist allowing the piercing of the corporate veil (for example, fraud, co-mingling of assets, where the subsidiary has a fictional existence, extension of the bankruptcy to the master of bankruptcy, misuse of corporate assets, and so on).
- A party that is the beneficiary of a right, such as a contractual payment, may rely on an arbitration clause contained in a contract, although this party is not a signatory to the contract.
- A third party can request to intervene in the proceedings by written application to the arbitral tribunal, and a party to the arbitration proceedings can request the joinder of an additional party (Article 1231-12, NCPC). The joinder must be done by a submission agreement signed between the parties to the arbitral proceedings and the additional party, and is subject to the approval of the arbitral tribunal.
- Article 6 of LAC Arbitration Rules provides for the joinder of additional parties. A third party may request to intervene, or a party to the proceedings may seek to have a third party join the proceedings, by submitting a request for joinder. No additional party may be joined after the confirmation of any arbitrator, unless all parties agree otherwise.

10. Can a non-signatory compel a party to the arbitration agreement to arbitrate disputes under the arbitration agreement?

In the event of an assignment of a contract, a number of Luxembourg court decisions have clearly confirmed the enforceability of the arbitration clause against a non-signatory.

Courts have extended arbitration agreements to non-signatories in cases of group contracts where the parties would:

- Have implicitly agreed to comply with the arbitration agreement.
- Be linked to the master agreement.

Separability

11. Does the arbitration law recognise the separability of arbitration agreements?

An arbitration clause is treated as separate from the agreement in which it is included and is not affected by the main contract's voidness, nullity, or rescission (Article 1227-2, NCPC).

Article 5(4) of LAC Arbitration Rules provides that an arbitrator can uphold the validity of an arbitration agreement despite any allegation that the underlying contract is non-existent or null and void.

Breach of a Dispute Resolution Clause

12. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid court jurisdiction clause?

Court Proceedings in Breach of an Arbitration Agreement

Where a dispute arising under an arbitration agreement is brought before a Luxembourg court, an objection to jurisdiction must be raised at the start of proceedings. If the opposing party fails to object to the court proceedings, the court will not raise the matter and the opposing party is deemed to have waived the right to settle the dispute by arbitration proceedings. If the opposing party objects at the outset, the court will declare itself without jurisdiction to hear the case.

Arbitration in Breach of a Valid Jurisdiction Clause

Disputes that are subject to mandatory court jurisdiction cannot be submitted to arbitration. For example, an arbitration clause inserted into a pre-established contract concluded between a professional trader and consumers is considered an abusive clause, if it is not proven that the clause was specifically accepted (see [Question 3](#)).

13. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

The court cannot restrain proceedings started overseas. The Luxembourg courts only have territorial jurisdiction and cannot issue decisions with extra-territorial effects.

Arbitrators

Qualifications and Characteristics

14. Are there any legal requirements relating to the qualifications and characteristics of arbitrators?

Qualifications

There are no requirements regarding arbitrators' qualifications. An arbitrator does not need a licence to practice as an arbitrator and there are no requirements with regard to their education or experience. Parties are free to designate the arbitrators or to determine the rules for their designation and their number, either expressly in the arbitration agreement or by reference to a set of arbitration or procedural rules (Article 1228-1, NCPC).

Characteristics

Any person over the age of 18 who is capable of entering into an agreement, is not under the supervision of a legal administrator, and has full voting rights can act as an arbitrator. There are no requirements regarding nationality, residence, education, or experience.

Independence and Impartiality

15. Are there any requirements relating to arbitrators' independence or impartiality?

Arbitrators must be impartial and independent.

Arbitrators must also comply with the ethical duties of the professional association to which they belong (if any). Luxembourg law does not include any provisions in this respect specifically applicable to arbitration.

Appointment and Removal

16. Does the law contain default provisions relating to the appointment and removal of arbitrators?

Appointment of Arbitrators

The parties can freely choose the arbitrators and the procedure for appointing them (paragraph 1, Article 1228-2, NCPC).

In the absence of agreement between the parties, three arbitrators are appointed (paragraph 2, Article 1228-2, NCPC). Each party appoints an arbitrator, and the two arbitrators appoint the third (Article 1228-4 2°, NCPC).

If a party fails to appoint an arbitrator within one month of being requested to do so by the other party or if the arbitrators cannot agree on the third arbitrator within one month of the designation of the last arbitrator, the arbitral institution or, failing that, the supporting judge, designates the arbitrator.

Where there are more than two parties and those parties do not agree on the rules for the constitution of the arbitral tribunal, the arbitral institution or, failing that, the supporting judge, appoints the arbitrators (Article 1228-4, NCPC).

All disputes relating to the constitution of the arbitration tribunal will be settled by the arbitral institution or, failing that, the supervisory judge.

Removal of Arbitrators

Arbitrators can be disqualified if there are circumstances giving rise to legitimate doubts regarding their impartiality or independence, or if they do not possess the qualifications required by the parties (Article 1228-7, NCPC).

Arbitrator appointments can also be revoked by the unanimous consent of the parties. In the case of a dispute, the arbitral institution or, failing that, the supporting judge (seized within one month from the arising or discovery of the litigious fact), has jurisdiction (Article 1228-8, NCPC).

Challenges to arbitrators must be brought before the District Court. The opposing party cannot object to the procedure initiated to challenge an arbitrator.

An arbitrator can be challenged and replaced if:

- The arbitrator is a director of a company that is a party to the dispute.
- The arbitrator or their spouse is related to a party or to the spouse of a party to the dispute. If the relevant spouse is an ex-spouse or is dead, this provision continues to apply if there are children, and in the absence of children, the parents-in-law, son or daughter-in-law, and siblings-in-law cannot be appointed as arbitrator.
- The arbitrator, their spouse, their ancestors, and descendants:
 - are party to another issue with the same object as the one subject to arbitration;

- are creditors or debtors of one of the parties; or
 - within five years before the challenge, have been an interested party in a criminal prosecution relating to one of the parties or their direct relatives.
-
- There is an issue between the arbitrator or the arbitrator's spouse, ancestors, or descendants and one of the parties, which began before the arbitration proceedings or ended less than six months before.
 - The arbitrator is guardian, heir apparent, or the recipient of a gift of one of the parties.
 - The arbitrator has already advised or written on the issue, been a witness to the dispute, or has entertained the parties at home or received presents.
 - There is hostility between the arbitrator and one of the parties (that is, insult, attack, or threat as of the beginning of the arbitration proceedings or less than six months before the beginning of the arbitration proceedings).

The LAC has clear requirements in respect of arbitrator independence, impartiality, and disclosure (Article 10, LAC Arbitration Rules). Before appointment or confirmation, the prospective arbitrator must sign a statement of acceptance, availability, impartiality, and independence. They must also disclose in writing to the Secretariat of the Arbitration Centre any facts or circumstances that might be of such a nature as to call into question their independence in the eyes of the parties, as well as any circumstances that might give rise to reasonable doubts as to their impartiality.

Procedure

Commencement of Arbitral Proceedings

17. Does the law provide default rules governing the commencement of arbitral proceedings?

Unless otherwise agreed by the parties, arbitration is commenced by the claimant's notification of the arbitration request to the respondent or, if at an earlier date and where applicable, by the notification of the arbitration request to the arbitral institution (1231-1, NCPC).

Unless the arbitration agreement provides otherwise, the arbitral proceedings will last six months from the acceptance of the last arbitrator's mandate (Article 1231-6, NCPC).

Applicable Rules and Powers

18. What procedural rules are arbitrators bound by? Can the parties determine the procedure that applies? Does the law provide any default rules governing procedure?

Applicable Procedural Rules

The parties can determine the procedural rules, within the limits imposed by the general principles of equality between the parties, the right of defence and the right to a fair trial.

Default Rules

If the parties do not come to an agreement on procedure within the time limits that the tribunal sets, the tribunal can set the procedural rules and place of arbitration (Article 1230, NCPC).

Evidence and Disclosure of Documents

19. Are there any mandatory or default rules governing disclosure or production of evidence? Can the parties set the rules on disclosure of documents and production of evidence by agreement?

The parties can agree the rules and scope of disclosure. In the absence of an agreement, the NCPC provides default rules.

The arbitral tribunal (or one of its appointed members) carries out necessary investigative measures (Article 1231-8, NCPC). The arbitral tribunal can:

- Hear the parties and any witnesses.
- Order a party to disclose evidence held by it, if necessary under penalty (Article 1231-8 1°, NCPC). If the evidence is in the hands of a third party, the party requesting the disclosure can seize the supporting judge on the tribunal's invitation (Article 1231-8 2°, NCPC). The supporting judge is seized by application (*requête*) and the court clerk summons the third party by registered letter, and then informs the arbitral tribunal. The order of the supporting judge can be appealed within 15 days.
- Invite a party that intends to rely on evidence held by a third party to initiate a specific procedure before the supervisory judge seeking a disclosure order against the third party.

The NCPC does not contain any rules on witness testimony. If the witness is easily contactable, parties can freely file witness statements. However, the parties' counsels cannot help with the preparation of these statements and cannot contact witnesses.

The parties can also request the arbitral tribunal to call a witness if the witness is not easily contactable, by proving that they could provide a first-hand testimony on a matter related to the dispute. If the arbitral tribunal accepts the request, the arbitral tribunal will hear the witness. However, the counsel cannot directly question the witness and must always go through the tribunal.

Witness preparation by either party is strictly forbidden and cross-examination does not take place.

Evidence

20. How, in practice, does the scope of disclosure in arbitrations compare with disclosure in domestic court litigation?

The scope of disclosure in arbitrations is the same as in domestic court litigation. Article 60 of the NCPC applies unless the parties agree otherwise. As a general principle, each party must provide evidence of the facts and co-operate in the investigation process conducted by the courts. Each party can therefore provide all documents it considers necessary to its defence.

An arbitral tribunal can:

- Order the parties to disclose certain documents.
- Order interim measures.
- Issue preventive evidentiary injunctions (Article 350, NCPC).
- Issue emergency evidentiary measures (Article 933, NCPC).

In commercial matters, corporate documents, accepted invoices, correspondence, balance sheets, or witness statements are often submitted as evidence (Article 109, Commercial Code).

Confidentiality

21. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation?

Unless otherwise agreed between the parties and subject to contrary legal obligations, arbitration proceedings are confidential (Article 1231-5, NCPC). Confidentiality binds all parties to the proceedings, and it covers all the information disclosed during the proceedings. The award itself is confidential. In particular, arbitrators are bound to confidentiality regarding the facts that have been revealed in the proceedings, unless they are ordered to disclose confidential information by a court or under the law. If they do not respect this obligation, arbitrators are liable under Article 458 of the Criminal Code.

Enforcement proceedings are public under Luxembourg Law. However, in enforcement proceedings before the Luxembourg courts, the arbitral award and the arbitration agreement are not part of the public record and cannot be accessed freely by third parties.

Once a party files an appeal to set aside an arbitral award or an appeal against the ex parte decision granting recognition of the arbitral award, the existence of the proceedings becomes part of the public record. However, the contents of the award and arbitration agreement are not available for public view.

Courts and Arbitration

22. What are the court's powers to intervene to assist arbitration proceedings seated in their jurisdiction?

The Arbitration Law specifies the role of the state courts in support of the arbitration process, by formally introducing the supporting judge (*juge d'appui*), inspired by French law. The supporting judge is the President of the District Court and is seized by one of the parties or by the arbitral tribunal or one of its members. The supporting judge sits as in summary matters and, unless provided otherwise, the supporting judge's orders are not subject to appeal or oppositions (Article 1230, NCPC).

The supporting judge has jurisdiction if either:

- The seat of arbitration is Luxembourg.
- The parties have agreed to submit the arbitration to Luxembourg procedural rules.
- The parties have expressly given jurisdiction to the Luxembourg courts with respect to arbitration related matters.
- There is a significant link between the dispute and the Grand-Duchy.

The supporting judge is always competent to prevent a denial of justice (Article 1229, NCPC).

Further, the supporting judge is competent to resolve any procedural difficulties arising from the arbitration process, including:

- Disputes relating to the appointment and recusation of arbitrators.
- The extension of the time limit for the award to be made (only in the case of the arbitration institution not intervening).
- Ordering a third party to disclose evidence, on invitation of the arbitral tribunal.

23. In what circumstances might a local court interfere to frustrate an arbitration seated in its jurisdiction?

Risk of Court Intervention

If an arbitration proceeding is pending, a state court cannot intervene and must stay any identical case submitted to it.

Delaying Proceedings

As state courts cannot intervene in pending arbitration proceedings, a party should not be in a position to effectively delay proceedings by frequent court applications.

Insolvency

24. What is the effect on the arbitration of pending insolvency of one or more of the parties to the arbitration?

As of the date of the declaration of bankruptcy, the debtor, through its legal representative, no longer has the right to either:

- Administer its estate.
- Take legal action as a claimant or defend itself against a complaint as defendant or in matters relating to its estate.

The bankruptcy trustee should take over the arbitration proceedings and the arbitration proceedings should be stayed.

Remedies

Interim Remedies

25. What interim remedies are available from the tribunal?

Interim Remedies

A party can apply to the state courts for interim measures of protection before the arbitral tribunal is constituted or after its constitution if it appears that the arbitral tribunal cannot grant the measure sought (Article 1227-4, NCPC). However, interim measures that would *de facto* be final do not qualify as interim measures and therefore cannot be granted by a judge. Seizing a state court (for example, the judge of summary proceedings (*juge des référés*)), does not imply a waiver of the arbitration agreement.

In the absence of any agreement of the parties to the contrary, the arbitral tribunal can also order any interim or conservatory measures considered relevant, with the exception of attachment measures for which only judicial courts have jurisdiction (Article 1231-9, NCPC). Once granted, the arbitral tribunal may modify, complete, suspend or retract the measure.

The party that obtained the measure from the tribunal is responsible for the costs and damages caused in the event that the tribunal later decides that the measure should not have been granted. For these measures to be efficient, the new Arbitration Law provides that these decisions are enforceable in the same way as decisions on the merits (their enforceability can only be refused for a cause of annulment of the award listed in Article 1238 of the NCPC).

Without Notice Applications

There are no legal provisions available allowing the tribunal to grant interim relief on a without notice basis. This matter is untested in Luxembourg arbitration proceedings.

Security

There is no specific provision in Luxembourg law empowering arbitral tribunals to order security for costs. Therefore, unless the parties agree otherwise, the arbitral tribunal can request a security deposit for costs.

Final Remedies

26. What final remedies are available from the tribunal?

The arbitral tribunal can award the same final remedies as the state courts, such as:

- Damages.
- Terminating a contract or declaring it void.
- Ordering a party to comply with contractual obligations.

Under Luxembourg law, damages can only be compensatory (that is, for the loss the creditor has made and the gain of which the creditor has been deprived) and cannot exceed the amount of the loss effectively suffered by the injured party (Article 1149, Civil Code). In this respect, an arbitral award granting punitive damages could be set aside on the basis of a violation of public policy.

Appeals

27. Can an arbitral award be appealed or challenged in the local courts? What are the grounds and procedure? Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises?

Rights of Appeal or Challenge

Awards made in Luxembourg cannot be appealed before Luxembourg courts. They can only be annulled by the Court of Appeal. The recourse seeking the annulment of the award also amounts to a recourse against the exequatur order of this award (Article 1237, NCPC).

Awards can also be challenged by third parties who are negatively impacted by the award, through third party opposition proceedings (tierce opposition). In that case, the opposition is brought before the jurisdiction that would have been competent in the absence of an arbitration agreement (Article 1244, NCPC).

The Arbitration Law does not make any distinction between partial and final awards with respect to challenges. Therefore, nothing would prevent a party from immediately challenging an award dealing exclusively with the tribunal's competence (and not wait until the final award).

Grounds and Procedure

The annulment proceedings must be initiated before the Court of Appeal (Article 1236, NCPC).

An arbitral award can be annulled if:

- The arbitral tribunal has wrongly declared itself competent or incompetent.
- The arbitral tribunal was improperly constituted.
- The arbitral tribunal has ruled without complying with its terms of reference.
- The award is contrary to public policy.
- No reasons were given for the award, unless the parties have dispensed the arbitrators from giving reasons.
- There has been a breach of the rights of the defence.

(Article 1238, NCPC.)

The party challenging the award is bound by the challenge served on the opposing party. This means that the party challenging the award must indicate, in its challenge, all the grounds it raises for the nullity of the award and it cannot add new grounds at a later stage. There is one exception to this rule, where the grounds for annulment are only known at a later date.

A request for annulment is only admissible if the award can no longer be challenged before arbitrators.

Although international awards cannot be set aside, their enforcement can be denied in Luxembourg during the ex parte proceedings under the same grounds claimed as the ones to set aside national awards (Article 1246, NCPC).

Further, the arbitral tribunal can, at the request of a party and after having heard the parties, interpret the award and rectify material mistakes and omissions or supplement the award where it has omitted to rule on a claim. An application for a review of the award can be made by a party on the following grounds:

- If, after the award is made, it appears that the award was obtained by the fraud of the successful party.
- If, after the award is made, it appears that decisive evidence has been withheld by the other party.
- If the award was made on the basis of evidence that has been recognised or judicially declared as being counterfeit after the award is made.
- If the award was made on the basis of testimonies, affidavits, or sworn declarations that have been recognised or judicially declared as being counterfeit after the award is made.

(Article 1243, NCPC.)

Waiving Rights of Appeal

Any contractual provision waiving the right to appeal an arbitral award before the Court of Appeal is deemed as non-written (Article 1236, NCPC).

28. What is the time limit to challenge or appeal an arbitration award rendered inside your jurisdiction?

An application based on one of the grounds in paragraphs 1 to 6 of Article 1238 of the NCPC must be filed within one month from the notification of the award or from the discovery of the fraud (Article 1239, NCPC).

An application based on one of the grounds in paragraphs 1 to 4 of Article 1243 of the NCPC must be brought within two months of the discovery of the relevant fraudulent event (Article 1243.2, NCPC).

Costs

29. What legal fee structures can be used? Are fees fixed by law?

Fee Structures

In principle, it is accepted that the arbitral tribunal decides on its own fees and expenses. This power is restricted in institutional arbitration, as the relevant institution generally fixes the arbitrators' fees by application of cost scales or schedules, under which fees are calculated on the basis of either the amount in dispute or time spent.

In ad hoc arbitrations, parties generally refer to an institution's schedule of costs to establish the arbitral tribunal's fees, to avoid conflicts.

Third Party Funding

There are currently no specific rules concerning the financing of a dispute by a third party. The admissibility of third party litigation funding has never been, as such, reviewed by the Luxembourg courts, but no rule excludes it. Therefore, the financing of a dispute by a third party is in theory available to the parties to the proceedings.

In addition, attorneys in Luxembourg must carry out their activities in compliance with the strict ethical rules laid down by both the amended law of 10 August 1991 on the legal profession and the ethical rules provided by the Bar. In that regard, the prohibition on charging purely contingency fees, the duty of professional secrecy, and the duty of independence are the most relevant in regard to advising clients on the subject of third party funding.

30. Are there any mandatory or default rules governing the allocation of costs?

Cost Allocation

Under Luxembourg procedural law and in the absence of a party agreement, costs are awarded at the arbitral tribunal's discretion considering the circumstances of the case and, in particular, the outcome of the proceedings. This discretion is part of the arbitral tribunal's adjudicating function and is expressly included in some arbitration rules. However, in practice, a party can request that the unsuccessful party bears the costs of the arbitration (that is, the arbitrators' fees and expenses, and the administering authority's costs). The arbitration court usually grants this request when the unsuccessful party loses on all grounds.

Cost Calculation

The following costs can typically be awarded:

- Arbitrators' fees and expenses.
- Institutional and administrative fees.
- Attorneys' fees.
- Costs for the taking of written and oral witness evidence.

Costs incurred by the parties are awarded to the extent they were necessary for the pursuit of the parties' respective claims and defences.

Contributor Profiles

Fabio Trevisan, Partner and head of Dispute Resolution practice

Bonn Steichen & Partners

Phone: +352 26025 1

ftrevisan@bsp.lu

www.bsp.lu

Professional qualifications. Attorney, Luxembourg, 1993; New York Bar; 1993.

Areas of practice. Arbitration; litigation; real estate and construction; general commercial; insolvency and restructuring; private wealth and business planning.

Recent transactions

- Specialising in complex commercial, corporate, and financial litigation and arbitration.
- Acting in a number of high-profile cases, with over two decades of experience in managing and conducting litigation for his clients in almost all sectors.
- Extensive experience of applications for enforcing and obtaining freezing injunctions in international arbitration, enforcements of ICSID awards, and more generally in the recovery of assets.
- Represents institutional lenders, developers, general contractors, and other business entities in commercial transactions and real estate law issues, including financing, corporate structuring, and real estate development.
- Extensive experience in commercial contracts, drafting and negotiating complex commercial agreements across a wide variety of industry sectors.
- Founder and Head of BSP's Italian desk.

Professional associations/memberships. Luxembourg Arbitration Association (LAA); member of the International Fraud Group (IFG); International Bar Association (IBA); member of the Bar Council, 2004-05 and 2010-2013.

Languages. French, English, Italian.

Laure-Hélène Gaicio-Fievez, Partner

Bonn Steichen & Partners

Phone: +352 26025

lhgaicio@bsp.lu

www.bsp.lu

Professional qualifications. Attorney, Luxembourg, 2011.

Areas of practice. Litigation and arbitration; real estate and construction; general commercial.

Recent transactions

- Extensive experience in all forms of international and domestic dispute resolution including litigation and arbitration, as well as enforcing and obtaining freezing injunctions in international arbitration, enforcements of ICSID awards, and the recovery of assets.
- Experience in real estate and commercial contracts, drafting and negotiating complex agreements.

Professional associations/memberships. Luxembourg Arbitration Association (LAA); member of the International Fraud Group; International Bar Association (IBA).

Javier García Olmedo, Senior Counsel

Bonn Steichen & Partners

Phone: +352 26025

jolmedo@bsp.lu

www.bsp.lu

Professional qualifications. Solicitor, England & Wales, 2013; Attorney, Spain, 2008.

Areas of practice. Litigation and arbitration.

Recent transactions

- Represented parties in commercial and investment arbitrations under all the major arbitral rules and institutions, including ICSID, PCA, UNCITRAL, ICC, and LCIA.
- Experience in litigation proceedings, with a focus on proceedings to seek recognition and enforcement of arbitral awards.
- Combines private practice with academic activity. Research Scientist at the Faculty of Law, Economics and Finance (FDEF) of the University of Luxembourg, teaching public international law, international dispute settlement, and human rights law.
- Previously, taught the LLM in International Dispute Settlement at Queen Mary University of London and was a Research Fellow at the Max Planck Institute Luxembourg.

Professional associations/memberships. Luxembourg Arbitration Association (LAA); Spanish and Iberoamerican Arbitration Club (CEIA); President of the Luxembourg Chapter CEIA.

END OF DOCUMENT
